

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

PETN, UNDER ARBITRATION ACT. No 29 of 1998

OMKAR CONSTRUCTION CO.

Versus

UNION OF INDIA

Appearance:

MR GR MALHOTRA for Petitioner

MR MUKESH A PATEL for Respondent No. 1

CORAM : ACTG. CHIEF JUSTICE MR. C.K. THAKKAR

Date of Order: 22/10/1999

ORAL ORDER:

This petition is filed for a prayer to appoint arbitrator under clause 64 of agreement. After notice was issued, the respondent appeared and various contentions were advanced including contention that it is time barred. My attention was invited, in this connection, by the learned counsel for the petitioner to two decisions i.e. S.S. Jetley vs. Delhi Development Authority and others, AIR 1998 Delhi 210 and Meda Narsimhulu vs. Council of Scientific and Industrial Research, New Delhi, AIR 1999 Andhra Pradesh 345. In both the cases, it has been held by the Bombay High Court and the Andhra Pradesh High Court that all contentions including the contention as to limitation can be raised before arbitrator and the arbitrator will decide such questions including question of jurisdiction. In view of the above legal position, in my opinion, petition deserves to be allowed and is accordingly allowed. Prayer in terms of para 12 (A) is granted. Sole arbitrator is appointed in terms of clause 64 (3)(a) (i) which reads as under:

"64 (3) (a) (i) Matter in question, dispute or

difference to be arbitrated upon shall be referred for decision to:

- (i) A sole arbitrator who shall be the General Manager, or a Gazetted Railway Officer nominated by him in that behalf in case where the claim in question is below Rs. 5,00,000/0 (Rs. five lakhs) and in cases where the issues involved are not of a complicated nature. The General Manager shall be the Sole Judge to decide complicated nature."

Petition is accordingly allowed. No costs.

parekh